

APPEAL NO. 021469  
FILED JULY 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 1, 2002. The hearing officer determined that the claimed injury on \_\_\_\_\_, occurred while the appellant (claimant) was in a state of intoxication, thereby relieving the respondent (carrier) of liability for the compensation for the injury; and that since there was no compensable injury, the claimant did not have disability. The claimant appeals, asserting that the evidence showed that the claimant was not intoxicated, and that he did have disability. The carrier responds, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's work-related injury was not compensable because the claimant was in a state of intoxication. As defined by Section 401.013(a)(2)(B) of the 1989 Act, "intoxication" means the state of not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of statutorily controlled substances. Such intoxication relieves the carrier of liability for paying compensation. Section 406.032(1)(A). Documentary evidence in the record supports the hearing officer's findings and conclusions on this issue. The results of the drug screen showed the presence of marijuana metabolites in a concentration of 138 nanograms per milliliter, which, according to the toxicology report, was confirmed by GC/MS (gas chromatograph/mass spectrometer), and which is considered to be a high result. The toxicology report from Dr. A contains the conclusion that "[t]he presence of marijuana metabolite definitely indicates the use of an illegal substance, and the high level most likely indicates recent use." Dr. A states "[I]n my opinion, based on reasonable medical probability, the employee was in a state of acute intoxication based on the drug results for marijuana, which was high enough to impair his abilities (judgment and concentration), and that the intoxication and impairment were proximate causes to his accidental injury." That evidence shows that the claimant tested positive for marijuana on the day of his accident. The claimant offered testimony that he had used marijuana some three weeks prior to the accident and that, despite the drug screen results, he had full use of his mental and physical faculties at the time of his accident. Based upon the drug test results and the toxicology reports, the hearing officer properly shifted the burden of proof to the claimant to show he had normal use of his mental and physical faculties at the time of his injury. The hearing officer specifically found that the claimant did not have the full use of his mental or physical faculties.

Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been

established from the conflicting evidence. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Ins. Co v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). We will not disturb the contested findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Applying this standard, we cannot say the hearing officer erred in finding that the claimant did not meet his burden of proving he had the normal use of his mental or physical faculties at the time of his injury. Thus, no basis exists for us to reverse the determination that the carrier is relieved of liability for workers' compensation benefits. Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability. Section 401.011(16).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TRANSPORTATION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEMS  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge